IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.355 OF 2006

IN

SUMMARY SUIT NO.951 OF 2006

Kirit P. Buddhabhartti ...Plaintiff

v/s

University of Mumbai ...Defendants

Mr P.K. Samdani, Sr. Advocate i/b Mr K.A. Chothani

for Plaintiff.

Mr S.C. Naidu with Mr B.A. Phadnis i/b Mr R.A.

Rodriques for Defendants.

CORAM : D.K. DESHMUKH J.

DATE : 5TH DECEMBER 2006.

P.C. :-

1. The plaintiff has filed this suit for recovery of fees against the services rendered to the defendants. The defendant - University had published an advertisement dated 9th November 2001 inviting bids from competent persons for submitting a valuation report to the University because the University proposed to value its assets, buildings, furniture and fixtures, plant and machinery etc. for the purpose of taking out insurance of those assets. It is stated that the valuation will have to be done on physical verification of each item and for replacement value. Pursuant to the advertisement, the plaintiff submitted its offer. In the year 1987 also, the plaintiff had carried the same work and submitted his report on 2nd February 1988. In his offer, he indicated that the purpose for which valuation is required is for insurance of the assets of the University. The plaintiff stated that his professional fees will be Rs.10,000/- per Rs.1,00,00,000/- insurable value. There were some corrections made in the offer by letter dated 8th August 2002. By letter dated 31st December 2002, the offer made by the plaintiff was accepted by the defendant - University. Admittedly, the plaintiff carried out the work, prepared the report and submitted it to the

University in November 2003. The plaintiff submitted his bill on 12th December 2003 claiming total amount of Rs.28,92,532/-. No payment was made even after receipt of the report. Therefore, the plaintiff demanded money by letter dated 22nd January 2004. No payment was made, therefore the plaintiff sent reminders dated 18th May 2004, 4th October 2004, 7th May 2005, 20th May 2005 and 20th June 2005. On 20th May 2005, a lawyer's notice was also served. Ultimately, the plaintiff received a letter from the University dated 18th June 2005. By that letter, certain queries were made in relation to the report submitted by the plaintiff. By that letter, the plaintiff was also informed that an amount of Rs.4,00,000/- is released as adhoc payment. The letter dated 18th June 2005 was replied to by the plaintiff by his letter dated 30th July 2005. In his reply, the plaintiff mentioned that the letter dated 18th June 2005 was the first query received by him from the University in connection with the report. There was response to the letter dated 30th July 2005 from the defendant - University which is dated 20th October 2005. What is pertinent to note is that though the plaintiff has categorically stated in his letter dated 30th July 2005 that the queries made in the letter dated 18th June 2005 were the first queries received by him from the University, it was not denied or disputed by the letter dated 20th October 2005. The plaintiff was told by the

letter dated 20th October 2005 that the report submitted by him is not acceptable to the University and therefore, he was told that he is not entitled to any payment. It is thereafter that the present suit has been filed.

2. An affidavit has been filed on behalf of the defendants seeking leave to defend the suit. The basic defence raised by the defendants is contained in paragraph 13 of the affidavit. In this paragraph, a complaint is made that the plaintiff did not respond to the queries made by the University in relation to the report. It is claimed that it was pointed out to the plaintiff that certain valuations cannot be accepted by the Insurance Company and therefore, the insurable value arrived at by the plaintiff is not correct. It was also claimed that certain parameters taken into account for the purpose of drawing up the valuation were contrary to the rules of the Insurance Company. It was claimed that valuation of various components such as lifts etc. was on lump sum basis. In short, according to the University, there were some basic and fundamental flaws in the valuation report submitted by the plaintiff. It is also the claim of the defendant University that valuation of the property for the purpose of insurance which was submitted by the plaintiff and insurable value are two different things and that the fees are payable

by the University to the plaintiff for insurable value and not valuation which is done for the purpose of insurance.

3. I have heard learned counsel for both the sides at length. Admitted position is that the offers were invited by the University for doing valuation of its various assets so that the University can go for insurance of those assets. It is also not disputed that the same work was entrusted to the plaintiff by the University in the year 1987 and he had submitted the report in February 1988. It is clear from the offer submitted by the plaintiff that the plaintiff was to submit to the University his estimate of the value of various assets of the University so that the University can take out insurance of those assets. So far as the professional fees are concerned, they were to be charged on the basis of the insurable value. The terms of payment were that Rs.1,50,000/- were to be paid as advance, Rs.1,50,000/- were to be paid on completion of physical verification and the balance amount was to be paid at the time of submission of final report. There was some dispute before me as to what the term ’insurable value’ means. To my mind, the term ’insurable value’, which is mentioned in the offer of the plaintiff, would be the valuation of the property mentioned in the report of the plaintiff which was

submitted to help the University in taking out insurance policy of the assets. It was submitted on behalf of the defendants that the insurable value will be that value for which the Insurance company agrees to give out an insurance policy. In my opinion, that interpretation cannot be accepted on the basis of the offer itself. Because if that was the insurable value, then it will not be known till on the basis of valuation report submitted by the valuer the Insurance Company arrives at it. According to the offer document, the fees are payable immediately on submission of the report. At that time, what will be known is the valuation of the property mentioned in the report. Obviously therefore, fees are to be worked out on the valuation of the property mentioned in the report and not some hypothetical insurable value that may be found out by some unknown Insurance Company. Therefore, in my opinion, the objection in that regard raised by the defendants has no substance. Had it been the intention of the University to make payment to the plaintiff on the basis of the insurable value found by the Insurance Company, it would not have agreed to make payment of the fees to plaintiff immediately on submission of the valuation report.

4. So far as the claim of the defendants that there is some basic flaw in the report is concerned, in

my opinion, this defence is clearly an after thought. Had there been some basic and fundamental flaws in the report, it would have been discovered by the University immediately on submission of the report or within a reasonable time thereafter. Perusal of the first written query made by the University dated 18th June 2005 shows that no fundamental flaw in the report is pointed out. The queries that were made by the University have been replied to by the communication dated 30th July 2005. There is no immediate response from the University and ultimately, the plaintiff has been told by the University in October 2005 that he is not entitled to the payment because his report is not accepted by the University. The fees were payable according to the offer made by the plaintiff on submission of the final report and it is this offer which was accepted by the University. Therefore, payment of fees for the valuation report did not depend on the University accepting the report. Assuming that there was a breach of contract committed by the plaintiff, the entitlement of the University would be to claim damages for breach of contract and not by withholding payment which the University had agreed to make to the plaintiff within 15 days of the submission of the final report. The University cannot unilaterally decide that the plaintiff has committed breach of the contract and therefore, fees that are payable to him

according to the contract between the parties, are liable to be forfeited as damages. Therefore, the defence that has been put forth on behalf of the University has no substance. In my opinion, the defendants have no defence to offer and they are not entitled to leave to defend the suit. Summons for judgment is therefore granted. Suit of the plaintiff is decreed in terms of prayer clause (a) excluding the bracketed portion and prayer clause (b). Considering that the plaintiff is a professional, he would be entitled to interest on the decretal amount from the date of institution of the suit till the date of realisation. It is accordingly so ordered. The rate of interest shall be 9 % p.a.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.